

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

THOMAS WHITLOW,

Defendant.

4:14-CR-3015

ORDER

This matter is before the Court on the defendant's motion to vacate under 28 U.S.C. § 2255 ([filing 387](#)). That motion will be denied.

This is not the defendant's first § 2255 motion. He filed such a motion on June 27, 2016 ([filing 334](#)) which the Court denied on the merits on October 18, 2016. [Filing 340](#). The Court declined to issue a certificate of appealability, [filing 340 at 6](#), and the Eighth Circuit denied his certificate of appealability as well, [filing 354](#). Then, he filed a motion that he styled as a motion for relief from judgment pursuant to [Fed. R. Civ. P. 60\(b\)](#) ([filing 359](#)). But, the Court concluded that it could only be construed as a second or successive § 2255 motion, and denied it because the defendant had not obtained authorization for a successive § 2255 motion from the Court of Appeals. [Filing 360](#). The Eighth Circuit affirmed that decision as well. [Filing 370](#).

As a result, the defendant's latest-filed motion is obviously a "second or successive" § 2255 motion. See [Gonzalez v. Crosby](#), 545 U.S. 524, 531-32 (2005); [Williams v. Kelley](#), 854 F.3d 1002, 1009 (8th Cir. 2017); [United States v. Lee](#), 792 F.3d 1021, 1023-25 (8th Cir. 2015); [United States v. Lambros](#), 404 F.3d 1034, 1036-37 (8th Cir. 2005). Such a motion requires authorization by the Court of Appeals. See § 2255(h); [28 U.S.C. § 2244\(b\)\(3\)](#). The defendant has not

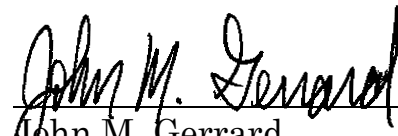
obtained such authorization, so his motion will be denied. See *United States v. Patton*, 309 F.3d 1093, 1094 (8th Cir. 2002); see also *United States v. Carranza*, 467 F. App'x 543 (8th Cir. 2012).

IT IS ORDERED:

1. The defendant's § 2255 motion ([filing 387](#)) is denied.
2. The Court will not issue a certificate of appealability in this matter.
3. A separate judgment will be entered.
4. The Clerk is directed to mail a copy of this Memorandum and Order to the defendant at his last known address.

Dated this 10th day of June, 2019.

BY THE COURT:



John M. Gerrard
Chief United States District Judge